

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.: 03-12560RGS

DAVID DEITZEL)
Plaintiff,)
vs.)
SPRINGFIELD TERMINAL)
RAILWAY COMPANY)
Defendant.)

**DEFENDANT, SPRINGFIELD TERMINAL RAILWAY COMPANY'S,
MOTION FOR DIRECTED VERDICT, PURSUANT TO F.R.C.P. 50,
AT THE CLOSE OF ALL THE EVIDENCE**

NOW COMES the defendant, Springfield Terminal Railway Company, in the above-entitled action, and respectfully moves this Honorable Court, pursuant to Rule 50 of the Federal Rules of Civil Procedure, to direct a verdict in its favor at the close of all the evidence. A directed verdict in this case is warranted because the plaintiff has failed to present sufficient evidence which would raise a jury issue on the allegation that the track switch he attempted to throw on March 12, 2001 "malfunctioned, was defective and was improperly and/or poorly maintained." The evidence at trial, as put on by the plaintiff, has failed to establish that throughout the relevant period, the track switch at issue was other than in a safe condition, free from hazards.

The plaintiff's lack of knowledge concerning the particular switch involved in the incident as well as the nature of the alleged defective condition of the subject track switch is based upon speculation and conjecture. The plaintiff has failed to present any credible evidence as to the alleged defective condition other than his own speculative testimony. Thus, the plaintiff's own testimony demonstrates his inability to sustain his burden of proof in showing a defective

*Filed in
open ct.
10-5-06*

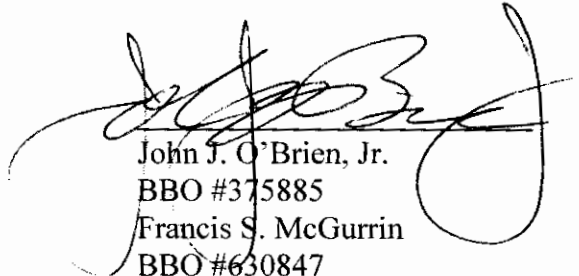
*M. Johnson
Att. Des/L*

condition with the track switch which resulted in his being injured, entitling the defendant to the entry of summary judgment in its favor.

The plaintiff has failed to establish that throughout the relevant period, that Springfield Terminal Railway Company had knowledge or notice of any alleged defective or unsafe condition with track switch at issue.

WHEREFORE, the defendant, Springfield Terminal Railway Company, respectfully requests that this Honorable Court direct a verdict in its favor at the close of the plaintiffs' case, pursuant to Fed. R. Civ. P. 50.

Respectfully submitted,
By the defendant,
Springfield Terminal Railway Company,
By his attorneys,

A handwritten signature in black ink, appearing to read "John J. O'Brien, Jr.", is written over a horizontal line. The signature is stylized with a large, sweeping loop at the end.

John J. O'Brien, Jr.
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DATED: 10/5/06